IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

WP(C).No. 19363 of 2005(E)

PETITIONER:

M.M. RAGHAVAN, SUB INSPECTOR OF POLICE
POLICE CONTROL ROOM, KOZHIKODE CITY,
KOZHIKODE.

BY ADV. SRI.KRB.KAIMAL
SRI.B.UNNIKRISHNA KAIMAL

RESPONDENTS:

1. **STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, HOME DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.**
2. **DIRECTOR GENERAL OF POLICE, POLICE HEAD QUARTERS, THIRUVANANTHAPURAM.**
3. **INSPECTOR GENERAL OF POLICE, NORTH ZONE, KOZHIKODE.**
4. **DEPUTY INSPECTOR GENERAL OF POLICE KANNUR RANGE, KANNUR.**

BY GOVERNMENT PLEADER SRI.BIJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE SHOW CAUSE NOTICE NO.A2-24313/95 DTD. 30/04/98 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER.

EXT.P2: COPY OF THE ORDER NO.A2.24313/95 KR DTD. 14/09/98 ISSUED BY THE 4TH RESPONDENT.

EXT.P3: COPY OF THE ORDER NO.A2/28003/98 NZ DTD. 18/03/1999 ISSUED BY THE 3RD RESPONDENT.

EXT.P4: COPY OF THE REVIEW PETITION DTD. 10/05/1999 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P5: COPY OF THE REVIEW PETITION DTD. 17/03/2004 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXT.P6: COPY OF THE SHOW CAUSE NOTICE NO.3122/H1/99/HOME DTD. 23/07/2001 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXT.P7: COPY OF THE REPLY DTD. 5/11/2001 SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT.

EXT.P8: COPY OF THE ORDER NO.A2(A) PR 6/99/KR DTD. 9/08/2000 ISSUED BY THE 4TH RESPONDENT.

EXT.P9: COPY OF THE REVIEW PETITION DTD. 15/02/2002 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXT.P10: COPY OF THE ORDER NO.G.O.(RT) NO.1688/2004/HOME DTD. 29/07/2004 ISSUED BY THE 1ST RESPONDENT.

EXT.P11: COPY OF THE ORDER NO.H1/PR-4/02/RL DTD. 12/06/2002 ISSUED BY THE SUPDT. OF POLICE RAILWAYS, THIRUVANANTHAPURAM.

EXT.P12: COPY OF THE ORDER NO.R2-53177/2002/SB DTD. 16/12/2002 ISSUED BY THE DY.INSPECTOR GENERAL OF POLICE, THIRUVANANTHAPURAM.

EXT.P13: COPY OF THE LETTER NO.G5-40160/2003 DTD. 9/05/2003 OF THE 2ND RESPONDENT TO THE PETITIONER.

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EXT.P14: COPY OF THE REVIEW PETITION DTD. 11/07/2003 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXT.P15: COPY OF THE ORDER NO.G.O.(RT) NO.3246/2005 (HOME) DTD. 30/12/2005 ISSUED BY THE 1ST RESPONDENT.

EXT.P16: COPY OF THE ORDER NO.G.O.(RT) NO.1141/2006/HOME DTD. 16/05/2006 ISSUED BY THE 1ST RESPONDENT.

/TRUE COPY/

P.A.TO JUDGE

KSS

ANTONY DOMINIC, J.
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W.P.(C) NO.19363 OF 2005
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Dated this the 1st day of August, 2007

J U D G M E N T

The substantial prayer in this writ petition is to quash Exhibits P5, P10, P15 and P16 orders issued by the first respondent rejecting the review petitions filed by the petitioner against the punishments imposed on different occasions, details of which are narrated hereunder. In addition to these, petitioner is also seeking an order directing the respondents to finalise the proceedings pursuant to Ext.P6 show cause notice dated 23.7.01.

2. The facts of the case are that the petitioner is a Sub Inspector of Police since 1987. Altogether there were four disciplinary proceedings against him and the first was concluded by Ext.P2 order dated 14.9.98 by which punishment of postponment of one increment for two years with cumulative effect was imposed on him. His appeal was

rejected and thereafter Ext.P5 review petition filed before the first respondent also resulted in its rejection by Ext.P15 order dated 30.12.2005. The second disciplinary action, ended up with Ext.P8 order of punishment dated 9.8.2000 by which his increment for two years were barred with cumulative effect. Here again the appeal was rejected and Ext.P9 review petition also met with dismissal by the first respondent as per Ext.P10 order. The third disciplinary action has only reached the stage of Ext.P6 show cause notice proposing to impose punishment of barring of one increment with cumulative effect and even going by the counter affidavit filed by the respondents, it can be seen that the matter has not been finalised yet. The fourth disciplinary action ended up in punishment as per Ext.P11 order dated 12.6.02 by which one increment was postponed with cumulative effect. Appeal against this order was also rejected and thereafter Ext.P14 review petition filed before

the first respondent was also rejected by Ext.P16. As a result of all these, it is the complaint of the petitioner that he was not included in the select list for promotion to the higher post. It is in this background that this writ petition is filed seeking to quash Exts. P5, P10, P15 and P16 and to exonerate him from the punishments that were imposed.

3. When the matter was taken up for hearing Sri.K.R.B.Kaimal, learned Senior counsel has argued two points. First one was in respect of the long delay in the finalisation of proceedings pursuant to Ext.P6 show cause notice proposing to impose punishment in respect of the third disciplinary action as mentioned above. As already noted, Ext.P6 show cause notice was issued on 23.7.2001 and even after the lapse of more than six years, final orders have not been passed. I agree with the learned senior counsel that there has been inordinate delay and the proceedings ought to have been finalised. Accordingly, I

direct the first respondent that proceedings pursuant to Ext.P6 shall be completed within a period of three months from the date of receipt of a copy of this judgment. In the meantime, necessary consultation process with the PSC also shall be completed.

4. The only point that was urged before me was in respect of Ext.P11 order of punishment imposed on 12/6/02, the review petition against which was rejected by Ext.P16. Counsel would submit that in terms of the provisions of the rules, there was no oral enquiry in as much as proceedings initiated were for imposition of minor penalty. According to the counsel, barring of increment with cumulative effect was converted as a major punishment by virtue of the amendment w.e.f. 16.5.2002, consequent on the Supreme Court judgment in the case of **Kulwant Singh Gill v. State of Punjab (1991 Supplement 1 SCC 504)** followed by this court in several judgments. Counsel should

submit that in this case punishment was imposed on 12/6/02, following the procedure laid down for imposition of minor penalty and for that reason the punishment is vitiated. This argument is met by the respondents in their counter affidavit by contenting that it is not the Kerala Civil Services (Classification, Control and Appeal) Rules 1960 which are applicable to the police personnel and that they are governed by the provisions contained in Kerala Police Departmental Enquiries, Punishment & Appeal Rules, 1958 and that there has not been similar amendment to those rules as stated above. But however, Executive Directive No.16/06 dated 16/9/02 has been issued from the Police Headquarters directing all officers to follow the procedure for major penalties including issue of show cause notices in all cases where punishment proposed is "increment bar for more than one year with cumulative effect." According to the counsel for the petitioner, following the Supreme Court

judgment mentioned above, necessary amendment ought to have been incorporated in the Special rules and in the absence of which, parties should be guided by the General Rules contained in the CCA Rules.

5. Having considered this matter, I am unable to accept the contention of the learned counsel for the petitioner. First of all, it is the Special Rules which govern the petitioner. The Special Rules at the relevant point of time did not contain any amendment as in the CCA Rules. But however, only w.e.f.16/9/02, even a Directive has been issued requiring the compliance with the procedure for imposition of major penalties even in cases where punishment proposed is barring of increment for one year with cumulative effect. If that be so, petitioner cannot contend that prior to 16/9/02, the procedure laid down in CCA Rules, ought to have been followed in his case.

6. That apart, even going by the CCA Rules,

amendment was incorporated only on 16/5/2002 and the punishment in question by Ext.P11 was imposed on 12/6/02. In so far as this particular disciplinary proceedings is concerned, a perusal of the records would reveal that they are in relation to misconducts committed as early as in 1999 and 2000 and pursuant to the memo of charges that was issued soon thereafter. Though the date of memo of charges or the initiation of disciplinary action is not available on record, I should mention that proceedings were initiated much before 16/5/02. In a disciplinary action whether procedure to be adopted is for major penalty or minor penalty, is decided at the stage of memo of charges or immediately thereafter. It having happened much earlier to the amendment to the CCA Rule, by the fact that at a later point of time, amendment has been brought about, the petitioner cannot insist that the clock should be put back and fresh proceedings should be initiated. In my considered

view, petitioner is not entitled to contend that major penalty proceedings ought to have been followed in respect of the punishment in question also.

7. For these reasons, I do not accept the contention of the learned counsel in so far as invalidity of Ext.P11 punishment is concerned. Accordingly, the only relief that can be granted to the petitioner is to direct finalisation of the proceedings pursuant to Ext.P6 show cause notice. The first respondent is directed to finalise proceedings pursuant to Ext.P6 show cause notice within a period of three months as directed herein above. The other contentions of the petitioner will stand rejected.

Writ petition is disposed of as above.

ANTONY DOMINIC, JUDGE.

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